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State v. Rios Appellant's Brief Dckt. 44325

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44325
)	
v.)	ADA COUNTY NO. CR 2014-15337
)	
LACEY MARIE RIOS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, twenty-seven-year-old Lacey Marie Rios¹ pleaded guilty to felony operating a motor vehicle while under the influence of alcohol (two or more convictions within ten years). The district court imposed a unified sentence of ten years, with three years fixed, and retained jurisdiction. After Ms. Rios participated in a “rider,” the district court suspended the sentence and placed her on probation for a period of ten years. Ms. Rios later admitted to violating her probation, and the district court revoked probation and executed her sentence. On appeal, Ms. Rios asserts the

¹ Ms. Rios is also identified as “Lacey Marie Rios-Castro” or “Lacey M Rios-Castro” in some documents. (See, e.g., Presentence Report (*hereinafter*, PSI), pp.44, 129.) All citations to the “PSI” refer to the 212-page PDF electronic version of the presentence report and attachments.

district court, when it revoked her probation, abused its discretion by ordering her sentence into execution without reducing the fixed term of the sentence.

Statement of the Facts & Course of Proceedings

Gowen Field Military Security Forces stopped Ms. Rios after she drove past the secure checkpoint and onto the base without stopping. (PSI, p.4.) She showed signs of impairment and reportedly admitted to consuming alcohol earlier that night. (PSI, p.4.) Ms. Rios failed the field sobriety tests administered and provided a breath sample with results of 0.292 BrAC. (PSI, p.4.) She was arrested and booked into the Ada County Jail. (PSI, p.4.)

The State charged Ms. Rios by Information with one count of operating a motor vehicle while under the influence of alcohol (two or more convictions within ten years), felony, I.C. §§18-8004 and 18-8005(6). (R., pp.32-33.) Pursuant to a plea agreement, Ms. Rios agreed to plead guilty to the charge. (R., pp.40-48.) The district court accepted her guilty plea. (R., p.48.) The district court imposed a unified sentence of ten years, with three years fixed, and retained jurisdiction. (R., pp.53-57.) After Ms. Rios participated in a “rider,” the district court suspended the sentence and placed her on probation for a period of ten years. (R., pp.66-74.)

About four months later, the State filed a Motion for Bench Warrant for Probation Violation, alleging Ms. Rios had violated the terms of her probation. (R., pp.75-77.) Ms. Rios admitted to violating her probation by committing the new crime of operating a motor vehicle while under the influence of alcohol and/or drugs in Canyon County No. CR 2015-24219 (*hereinafter*, the Canyon County case), consuming an alcoholic beverage, and failing to abide by the lawful request of her supervising officer that she

not operate any vehicle unless legally licensed, insured, and the vehicle contained an interlock device. (R., p.99; see R., p.76.)

At the probation violation disposition hearing, the State recommended the district court revoke probation and execute Ms. Rios's sentence. (See Tr., p.15, Ls.7-18.) Ms. Rios also recommended the district court revoke probation and execute the sentence, but requested the district court reduce her fixed term so she would have a unified sentence of ten years, with two years fixed. (See Tr., p.16, L.25 – p.17, L.13.) Defense counsel informed the district court Ms. Rios had received a unified sentence of ten years, with two-and-one-half years fixed, in the Canyon County case. (See Tr., p.16, Ls.17-18.) The district court revoked probation and ordered Ms. Rios's sentence into execution without any reduction.² (R., pp.101-03; see Tr., p.22, L.19 – p.23, L.3.) The district court gave Ms. Rios credit for time served. (R., p.102.)

Ms. Rios filed a Notice of Appeal timely from the district court's Order of Revocation of Probation, Imposition of Sentence and Commitment. (R., pp.104-06.)

ISSUE

When the district court revoked Ms. Rios's probation, did it abuse its discretion by ordering her sentence into execution without reducing the fixed term of the sentence?

² In the Canyon County case, Ms. Rios's sentence was to be served concurrently with the sentence in this case. (See Tr., p.22, Ls.19-22.)

ARGUMENT

The District Court, When It Revoked Ms. Rios's Probation, Abused Its Discretion By Ordering Her Sentence Into Execution Without Reducing The Fixed Term Of The Sentence

Ms. Rios asserts that the district court, when it revoked her probation, abused its discretion by ordering her original sentence of ten years, with three years fixed, into execution without any reduction of the fixed term of the sentence.

Idaho Criminal Rule 35(b) authorizes a district court to sua sponte “reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation.” I.C.R. 35(b). Here, Ms. Rios’s request for a reduction of the fixed term of her sentence was essentially an oral Rule 35(b) motion. (See Tr., p.16, L.25 – p.17, L.13.)

The Idaho Court of Appeals has explained “[a] motion for a sentence reduction under this rule is essentially a request for leniency which is addressed to the sound discretion of the district court.” *State v. Hoskins*, 131 Idaho 670, 672 (Ct. App. 1998). “On appeal, our criteria for review of rulings on Rule 35 motions are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “The defendant bears the burden of showing that the sentence is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution.” *Id.* “Our focus on review is upon the nature of the offense and the character of the offender.” *Id.*

The *Hoskins* Court further explained, “[w]hen we review a sentence that is ordered into execution following a period of probation, we do not base our review upon only the facts existing when the sentence was imposed.” *Id.* “Rather, we examine all

the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation.” *Id.*

Ms. Rios submits she has shown her sentence is unreasonably harsh. While Ms. Rios was on probation, she was “undertreated.” At the probation violation disposition hearing, Ms. Rios’s defense counsel informed the district court Ms. Rios had been “supervised in the Third District, was in an aftercare program where people were actively using. She didn’t feel comfortable in that environment and sharing, she tried to get into some different counseling.” (Tr., p.16, Ls.7-12.)

Defense counsel also reported Ms. Rios “had very little contact with her probation officer, I think she said she saw him twice during the time she was on probation.” (Tr., p.16, Ls.12-14.) Ms. Rios told the district court she had notified her probation officer that she needed supervision. (Tr., p.18, Ls.15-19.) She stated, “[s]o then when I did only see him twice, and that was in the first two months following my Rider, and in aftercare I was once a week, that wasn’t enough for me.” (Tr., p.18, Ls.20-23.) Defense counsel thought Ms. Rios was “severely undertreated. And although that’s not an excuse, I think it does somewhat explain the relapse.” (Tr., p.16, Ls.14-17.)

Further, Ms. Rios remains motivated to get treatment. Her defense counsel told the district court “she did not waste any time when she was in custody in Canyon County engaging in treatment.” (Tr., p.17, Ls.18-19.) Ms. Rios stated, “I have six different certificates through the support group, and essentially that was me getting started on not—from opening up and beginning because that is basically six different groups of classes, continued six times.” (Tr., p.19, Ls.12-16.) She also stated, “[a]nd

that's still hard for me, it's still—just thinking about it gives me really bad anxiety, but I know that's what I have to do and I have to keep at that pace.” (Tr., p.19, Ls.16-19.) Ms. Rios knew “I can't just let myself sit in that . . . hole, I need to get myself out. And I believe the next two years I have remaining on my fixed time for Canyon County, that's what I'll be able to do.” (Tr., p.20, Ls.4-8.)

One of Ms. Rios's prime motivators for getting and succeeding in treatment is her family. Ms. Rios told the district court that “as much as I love my kids and taking care of them and I want to be there to take care of my mom, I can't do that because I can't put myself away from being a victim” (Tr., p.19, Ls.24 – p.20, L.2.) Defense counsel described Ms. Rios as follows: “She is a hard worker and she is a good mother, and hopefully she can get this addiction behind her and can continue with her education as well as caring for her family.” (Tr., p.17, Ls.21-24.)

Based on the above, Ms. Rios asserts she has shown her sentence is unreasonably harsh. Thus, the district court, when it revoked Ms. Rios's probation, abused its discretion by ordering her original sentence of ten years, with three years fixed, into execution without any reduction of the fixed term of the sentence.

CONCLUSION

For the above reasons, Ms. Rios respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 20th day of October, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of October, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas